



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Ioannis Rizos :

ORDER

Tax Registry No. 934610 :

OF

Military & Extended Leave Desk :

DISMISSAL
-----X

Police Officer Ioannis Rizos, Tax Registry No. 934610, having been served with written notice, has been tried on written Charges and Specifications numbered 2023-28072, as set forth on form P.D. 468-121, dated March 6, 2023, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Ioannis Rizos from the Police Service of the City of New York.

EDWARD A. CABAN
POLICE COMMISSIONER

EFFECTIVE:

1/9/2024

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Website: <http://nyc.gov/nypd>



POLICE DEPARTMENT

November 8, 2023

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2023-28072
Police Officer Ioannis Rizos	:	
Tax Registry No. 934610	:	
Military & Extended Leave Desk	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Stuart London, Esq.
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To:

EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Ioannis Rizos, while assigned to the 122 Precinct, on or about and between June 19, 2022, and February 19, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer Rizos wrongfully ingested Amphetamines without police necessity or authority to do so.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Police Officer Ioannis Rizos, while assigned to the 122 Precinct, on or about and between June 19, 2022, and February 19, 2023, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer Rizos wrongfully possessed Amphetamines without police necessity or authority to do so.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 18, July 19, August 22, August 23, August 28, and September 7, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Kerry Grennan, Dr. Ryan Paulsen, and Deputy Chief Surgeon Joseph Ciuffo as witnesses. Respondent called Lieutenant Chad Manzi, Sergeant Archie DePietro, Police Officer Daniel Patton, Police Officer Mel Perashi, Laboratory Director Kenneth Reine, Dr. Liaqat Abbas, Dr. Mario San Bartolome, Dr. Michael Ricciardi, and Susan Rizos as witnesses; he also testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all the evidence in this matter, the Tribunal finds Respondent Guilty of the charged misconduct and recommends that he be dismissed from the Department.

INTRODUCTION

This case involves an allegation that Respondent wrongfully used and possessed amphetamines, based upon the results of a random drug-screening test. The Department

presented evidence that samples of Respondent's leg hair were subjected to toxological examination and found to contain methamphetamine.

Respondent contested the charged misconduct on the theory that he inadvertently absorbed selegiline, a medication prescribed to his dog, while crushing the pills and administering the medication to his ailing pet between October and December 2022. He presented testimony from experts, co-workers, and his wife in support of his defense.

The "A" and "B" hair samples provided by Respondent during the random test were also subjected to isomer profiling, revealing the presence of 100% D-methamphetamine in each sample. Respondent's "C" sample, although it, too, tested positive for methamphetamine, was not subjected to an isomer profile because there was insufficient sample left after the confirmatory tests to conduct one.

Expert testimony established that methamphetamine that is produced lawfully in pharmaceutical laboratories or unlawfully in high-quality clandestine laboratories, metabolizes into the D-methamphetamine isomer. When selegiline metabolizes in the human body, it produces L-methamphetamine. While D-methamphetamine and L-methamphetamine are both isomers of methamphetamine, they are distinct from each other based upon their molecular structures. Respondent did not ask any of the independent laboratories to which he submitted his hair, fingernail or toenail samples to perform an isomer profile analysis.

Based upon the credible, relevant evidence presented at trial, the Tribunal rejected Respondent's defense and found him guilty of wrongfully using and possessing amphetamines.

ANALYSIS

The following is a summary of the facts that are not in dispute.

On February 19, 2023, Respondent, assigned to the 122 Precinct, was ordered to appear at the offices of the Medical Division, in Lefrak City, for drug testing. Before providing a sample, he completed the test subject portion of a Medical Division Drug Screening Questionnaire; Members of Service are required to list any prescription medications they are taking on that form (T. 19, 21; Dept. Ex. 1). Police Officer Kerry Grennan, assigned to the Medical Division, completed the rest of the document, and then brought Respondent into a collection room (T. 22-23).

Respondent was advised that he had the choice of submitting hair from his head, arms, chest, legs, or underarms; he decided that his sample would be taken from his leg (T. 23, 44). Police Officer Grennan sanitized a tabletop, then placed a sheet of parchment paper on it; Respondent sat in a chair next to the table, put his calf on the tabletop, and Grennan collected hair from that leg using a razor (T. 24, 45).

Grennan first collected the hair in one large pile, then separated the hair into three smaller piles, labeled A, B, and C (T. 25). The samples were packaged in three separate envelopes, which were sealed in Respondent's presence (T. 26-30; Dept. Ex. 5). Respondent initialed each envelope and signed a certification, which stated, "I certify this sample contained in the envelope is my sample. It was cut close to the skin, and I witnessed the sample collector seal the sample into the envelope" (T. 27-28). Grennan then stapled the three envelopes together, along with the Drug Screening Questionnaire, and placed them into a safe (T. 30). At the end of the duty day, the samples in the safe were collected, put into an overnight mailbox, and shipped to the

laboratory the next day (*Id.*). Grennan testified that 26 drug-screening samples were collected that day (T. 57).

On February 21, 2023, Psychomedics Laboratory received Respondent's hair samples, upon which a series of forensic tests were performed. The results were entered into a report (Dept. Ex. 5). Psychomedics reported that Respondent's "A" and "B" samples had tested positive for D-methamphetamine (T. 260; Dept. Ex. 5). The Medical Division received this report on February 27, 2023 (Dept. Exs. 1, 2).

On March 3, 2023, Dr. Joseph Ciuffo, the Department's Medical Review Officer, reviewed the test results and contacted Respondent (T. 138). After interviewing Respondent and completing the Medical Review Officer's report, Dr. Ciuffo certified the drug failure, and Respondent was suspended (T. 135-138, 143; Dept. Ex. 2).

Respondent sought an independent forensic examination from Quest Laboratories of the "C" sample collected by the Medical Division on February 19, 2023; that sample also tested positive for methamphetamines, though the specimen quantity was not sufficient to specify the specific type of methamphetamine (Dept. Ex. 6). He also submitted samples of his chest hair to Quest and underarm hair to Omega Laboratories in March 2023; he submitted fingernail and toenails to United States Drug Testing Laboratories in April 2023 (Resp. Exs. A, B, E, F). Those tests returned a negative result.

Department's Case

Dr. Ryan Paulsen

Dr. Ryan Paulsen testified that he is the senior analytical chemist for mass spectrometry at Psychomedics Corporation; he has been employed by Psychomedics since 2014 (T. 59-60). He holds a bachelor's degree in chemistry and a Ph.D. in Medicinal Chemistry from the

University of Utah (T. 61). He is a fellow of the American Board of Forensic Toxicology and is certified by the National Registry of Certified Chemists as a toxicological chemist (*Id.*). Dr. Paulsen also holds a certificate of qualifications in forensic toxicology from the New York Department of Health (*Id.*)¹.

Dr. Paulsen testified that methamphetamine is a potent stimulant available as a prescription drug; it is also available clandestinely and illegally. Methamphetamine can appear in two isomeric forms: D-methamphetamine and L-methamphetamine. He testified further that the hair shaft outside the body consists of dead keratin cells; inside the hair follicle is where hair growth occurs, interacting with the bloodstream. Any substance that passes through the bloodstream, including drugs of abuse, can potentially be incorporated into the cells in the hair follicle. Dr. Paulsen explained further that even when the hair grows past the skin's surface, the drugs remain trapped within the hair, which can be analyzed later (T. 63-64, 69-70).

Dr. Paulsen testified that samples usually arrive at the Psychomedics laboratory in a FedEx box; the box is opened, and the tamper-evident seals are checked. The seals on the bag containing the samples and the seals on the samples themselves are checked to ensure their integrity. If those seals are intact, the chain of custody documentation is examined to ensure that it has been filled out completely, with the necessary information and signature (T. 71). If there is any sign of tampering evident at this point, the laboratory does not proceed to testing, and this Department is notified (T. 72).

Dr. Paulsen testified that the "A" sample is then opened. A small amount of hair is weighed before subjecting it to a patent digest, designed to "disrupt the structure of the hair efficiently . . . and have drug come out of the hair," after which it can be subjected to enzyme

¹ Dr. Paulsen's *curriculum vitae* is in evidence as Department's Exhibit 3.

immunoassay (T. 71-72). Once the immunoassay test is performed, if the sample comes back positive for the presence of drugs, the laboratory considers the result a “presumptive positive” (T. 75). The hair used for the preliminary screening is then discarded (*Id.*). Another 10 milligrams of hair are removed from the “A” sample, and subjected to an extended “wash” procedure (T. 76).

Dr. Paulsen explained that the methamphetamine “wash” procedure involves a 90 percent ethanol and 10 percent water wash. He further described the process:

These are three 30-minute washes followed by two one-hour washes, and then I say separate washes. Basically, they remove the liquid, put in fresh liquid, and so forth. And that’s agitated and heated to remove any contamination from the sample prior to the extraction from the hair to get the drug out of the hair.
(T. 80-81)

Ethanol washes, rather than an aqueous wash, are used when testing for methamphetamine due to methamphetamine being water-soluble (T. 82).

The extract is then analyzed on a liquid chromatography mass spectrometer (LC-MS-MS) (T. 76). The result of the analysis is compared to controls to ensure that they are acceptable; if they are, the sample moves on to the certifying scientists who review the data on the screening and compare it to the results of the confirmation process. If the certifying scientists confirm a positive, only then is the sample considered “positive” (T. 76-77).

Dr. Paulsen testified that for clients who do not submit “A” and “B” samples, if the sample they offer tests positive for a drug, the results are reported back to the client as a positive; for the NYPD, however, after an “A” sample tests positive, the technician moves onto the “B” sample (T. 77-78).

The “B” sample is then put through the same confirmation process; it is not subjected to the immunoassay again but goes through the “wash” procedure and then into mass spectrometer

analysis. If both the “A” and “B” samples test positive for the presence of drugs, the result is reported to the NYPD as a positive (T. 78).

Dr. Paulsen clarified that if an “A” sample returns a negative result, no further testing is conducted, and the result is reported to the NYPD as a negative. If the immunoassay on the “A” sample tests positive, but the result of the LC-MS-MS is negative, the result is also reported as negative. If the “A” sample, after the immunoassay and the LC-MS-MS, tests positive, but the “B” sample tests negative, the result is reported as negative (T. 80).

Dr. Paulsen explained that he did not think they collected any drug sample in the fifth wash for Respondent’s “A” sample (T. 87). However, in Respondent’s “B” sample, after the fifth wash, “they were still pulling off a little bit of the drug [off] of the sample after five washes” (T. 88).

Dr. Paulsen testified that both of Respondent’s hair samples, as well as the third sample analyzed by Quest Diagnostics, tested positive for methamphetamine. The “A” sample could then be subjected to isomer profile testing to determine which type of methamphetamine was present, D or L; the “C” sample did not have enough sample remaining to conduct such a test.

Dr. Paulsen explained, “D- and L-methamphetamine are enantiomers of one another” and analogized it to a person’s hands: “Your hands are mirror images of one another, but your hands are not superimposable. That’s how L-meth and D-meth are. . .with the D- and L-analysis, because it is a chiral molecule, you need to do a chiral separation” (T. 91). When Psychemedics performed the D/L isomer profile test on the hair samples provided by Respondent, the results were 100 percent for D-methamphetamine (T. 93). He explained:

Certain products like Vicks’ inhaler contain exclusively L-methamphetamine. If you were looking at a sample where someone is using L-meth, the analysis should only show L- meth. If someone were using, preferably, a pharmaceutical form of methamphetamine, you’ll see the D- or a clandestine lab that’s sophisticated; then

another might be able to give you mature methamphetamine product. But the D-meth is the one that's a potent drug that's highly regulated.

(T. 94-95)

Dr. Paulsen later testified:

[A] proper follow-up test for a hair test would be to have something go straight to mass spec. Because then you can check if there's any drug present above the L or D. With an immunoassay, the testing laboratory isn't going to know that it's a follow-up test. If it's just sort of sent in, they're going to run their usual immunoassay.

(T. 260).

The cutoff for methamphetamine used by the NYPD is five nanograms per ten milligrams of hair, which is also the cutoff that was established with the FDA clearance (T. 95).

Respondent's sample yielded a result of 10.4 nanograms per 10 milligrams, double the cutoff (T. 90, 103). Dr. Paulsen testified that "in order to hit the cutoff of five, you would need to be taking ... about 170 to 670 milligrams per week would get you to the five-nanogram per 10-milligram cutoff" (T. 257). This estimate was taken from a study involving drug abusers based on self-reporting (T. 304).

Dr. Paulsen testified that while head hair is typically oriented in a sample so you can discern which end was closest to the scalp, body hair is not collected the same way:

With body hair, you have a lot of hair that's dormant, it hasn't been growing for a while, but it hasn't fallen out either. With body hair, you are looking at a lookback window that's harder to pinpoint down, but we say six to eight months or so. Any drug use that occurred over the last six to eight months, you would see in a year sample. The orientation doesn't matter so much because you're looking at so many time frames based on when those hairs stop growing to begin with.

(T. 96).

Dr. Paulsen testified that with body hair, it is more challenging to determine precisely when a person took the drug they tested positive for:

Body hair, because of that factor of there being a lot of dormant hair that's not growing, maybe stopped growing five months ... might tell you what drugs somebody was taking five months ago, but it doesn't tell you what they were

taking now. You have hairs in that population that are in the last couple of months, and they are growing, and that would show you what's going on in the last couple of months. . . It's a little bit harder to pin down the time frame, so it's less important that the hair be oriented because it represents a different set of time frames already.

(T. 97-98).

He further explained that when testing body hair, he "thinks it would be more challenging to sort of make that determination of have I collected enough" (T. 251-252). The six-month lookback window on body hair will also be different for different body parts, as some body parts are more in contact with clothing, so the hair rubs up against clothing and is more likely to fall out (T. 263-264).

When asked if handling medication that contains methamphetamine in powder or pill form contaminates one to the point of exceeding the cutoff, Dr. Paulsen stated, "The skin is a good barrier. . . You would have to consume a good deal of drug to get to that five nanograms per ten nanogram cutoff in the quantities that one absorbs through their hands dealing with a pill should not even come anywhere near that level" (T. 104). He testified there "should be some sort of physical manifestation" in a person who tested above the cutoff levels for methamphetamine, such as "an elevated heart rate, elevated mood, hypertension can be caused. At really high levels, it can result in psychosis. It's a very powerful stimulant with effects of euphoria" (T. 106-107).

Respondent's counsel asked:

If an individual crushes a pill form of selegiline, and handles it with his hands obviously and puts it in his dog's mouth and puts it in his dog's food and crushes it on a chopping board that he eats on and does it for a 45-day period, do you think it's possible that that sort of exposure to selegiline can result in maybe not 10.4, but some articular quantitative registering when he is given a hair test?

Dr. Paulsen answered, "I think it would be very difficult to do that" (T. 265).

Dr. Joseph Ciuffo

Dr. Ciuffo testified that he is this Department's Medical Review Officer (T. 132). The role of the Medical Review Officer is to review drug-screening results to "provide medical oversight with regard to interpreting results" (*Id.*, 158). Dr. Ciuffo is certified to perform this role and must re-certify every five years (T. 133, 159). He is also board-certified in family medicine and practices occupational therapy as a branch of his practice (T. 134). Dr. Ciuffo, in addition to his role in this Department, serves as a Medical Review Officer for corporations and assists in supervising their drug-free workplace programs, much of which is regulated by the federal government (*Id.*).

Dr. Ciuffo examined Department Exhibit 2 and identified it as the Medical Review Officer's report he prepared addressing Respondent's reported positive drug test (T. 135-136). The Medical Division Drug Screening Questionnaire was incorporated in that report (T. 136). Respondent listed four prescription medications on that questionnaire that address diabetes and hypertension: Janumet, Amlodipine, Losartan, and Glipizide (T. 137-138). Dr. Ciuffo testified that none of those medications contained methamphetamines (T. 136).

Dr. Ciuffo testified that once Respondent's drug test results were reported, he contacted him by telephone to explore whether there was an explanation for the positive result (T. 138-139). He referred to the laboratory report as a "laboratory positive," which did not become a "final verified positive" until he reviewed any possible explanations (T. 138). Dr. Ciuffo testified that he directed his staff to obtain documentation from Respondent's physician, setting forth his medical conditions and verification from his pharmacy of any prescriptions in his name (T. 140). According to Dr. Ciuffo, the medications Respondent's doctor reported matched the list of drugs verified by the pharmacy, none of which could have caused a methamphetamine-positive result (T. 140-141).

Dr. Ciuffo then spoke with Respondent, who informed him that he had a pet dog prescribed medication by a veterinarian, Dr. Villadelgado, from the Forest Animal Hospital (T. 142). Dr. Villadelgado provided documentation of his treatment of Respondent's dog, which revealed that he had prescribed selegiline; Dr. Ciuffo testified that he was unfamiliar with how that medication is used in veterinary practice, but was aware that in humans, the drug is used to treat Parkinson's disease (T. 142). He testified further that selegiline could metabolize into amphetamine, but not methamphetamine; he confirmed that Respondent's laboratory test was positive for methamphetamine and not amphetamine (T. 142-143). He testified further that methamphetamine is a central nervous system stimulant that can create a sense of euphoria and raise blood pressure and heart rate (*Id.*). Dr. Ciuffo testified that methamphetamine, whether prescribed or illicit, could be ingested in pill form, smoked, or injected (T. 143-144).

On cross-examination, Dr. Ciuffo acknowledged the Respondent told him that his dog had a prescription for selegiline. Respondent administered the medicine to the dog by crushing it with his hands and mixing it into its food (T. 163-164). He denied that Respondent encountering selegiline in that manner could lead to a positive test for methamphetamine (T. 164). When Counsel for Respondent asked him why it would not, Dr. Ciuffo testified:

For a couple of reasons. I questioned him specifically, if he ingested this pill by accident, and he said no. I also look at the quantitative values of the test sample, the cutoff level being five and the quantitative being well above that, double that at ten. And the third thing is that there's a D- and L-isomerization, which confirms that selegiline, which can metabolize partly into L-isomer metabolite, this was 100 percent D, which means that it is not coming from the selegiline. Even in spite of the fact that the MOS told me he did not ingest this medication. So those are the three reasons why that's not the case here.
(T. 164-165).

Counsel for Respondent followed up by asking whether, if the drug screening results had reported 100 % L-, and no D-methamphetamine, that would have been a failure of the drug test

(T. 167). Dr. Ciuffo answered as follows:

Clearly, when I asked, "Did you take this medication by accident?" the person answered no, he did not, he handled the drug. And based on the cutoff level being well above --the quantitative value being well above the cutoff level, that would make it where the per -- this would not be an alternative explanation, in a drug that wasn't prescribed to him, that he did not ingest, that he described he handled in the way you outlined, and that was considered, but it was not scientifically proven. In addition . . . it's a hundred percent D, not L, which would explain selegiline in a person that had a prescription for selegiline. But if you don't have a prescription and you did not ingest, even by accident, and it's a 100 percent D, then it is not coming from the selegiline.

(T. 168).

Counsel for Respondent then asked Dr. Ciuffo the following question, and Dr. Ciuffo provided the following answer:

Q. If I take pills and I crush them in my fingers 30 days in a row, do you believe that crushing those pills can get into the fiber of my fingers, into my bloodstream, and that could effectively show that I'm testing positive for a drug that I had never ingested, even though I was able to touch it with my fingers?

A. I believe that there are certain environmental factors, like what you're alluding to, but not necessarily to make the person test positive in the way that tests are done by cutoff levels. Just like if you live with a smoker and you took a life insurance exam, they could check your urine, and you'll have nicotine if you're a nonsmoker, but you live with a smoker. But that doesn't -- that's not the same as environmental contamination with regard to doing forensic toxicological drug tests. That's why we set cutoff levels--the same thing with the marijuana secondhand smoke. If you have a positive test, the way the cutoff is set, it's not coming from secondhand smoke.

(T. 171-172).

Dr. Ciuffo eventually conceded that it was medically possible for the active ingredients in pills crushed in the hands of an individual to get into that individual's bloodstream; he later qualified that answer by testifying, "to a certain extent, it might be correct, yes. It's not

impossible” (T. 173). He also conceded that it was possible, under the same circumstances, for the active ingredients in a drug to get trapped in hair in “minute amounts” (T. 174). Dr. Ciuffo acknowledged that Respondent’s weight, attendance, hypertension, diabetes, and performance evaluations played no role in his Medical Review Officer’s report (T. 175-176). He asserted, “I can’t determine how frequently someone uses something when they have a positive drug test... I don’t know how often a person uses. How – the frequency, I can’t determine frequency” (T. 176). In response to the question, “[Respondent’s test result of] 10.4 doesn’t mean anything to you in terms of frequency of use, correct?” Dr. Ciuffo answered, “I can’t determine the frequency of use solely from a cutoff level, no” (T. 182).

Dr. Ciuffo was asked whether he considered “the person. . . who he was in terms of . . . his behavior at the office, his prior hospitalizations, anything other than the raw numbers that you utilized to determine – yeah, this is consistent with a meth user?” (T. 176-177). He responded that he interviewed Respondent over the telephone and reviewed “the prescription drugs and the medical letter from his physician, to try – and the questionnaire that was taken at the time of the drug collection, as well as inquiring for prescription use, ingestion of the veterinary medication, looking at any of those factors that could be involved in the interpretation of the test result” (T. 177, 195-196).

Dr. Ciuffo was asked whether nervousness would be a psychological effect of using methamphetamine; he answered:

It depends on when you’re seeing the person, the effect of the drug, and how often they use it. Are they using it casually? Are they using it chronically? So, you can see nervousness in someone that’s abusing a drug on a regular basis, but not if it was being used infrequently. When the effect of the drug wears off, you may not see any physical signs.
(T. 181-182).

Dr. Ciuffo testified that he was unaware of there being insufficient leg hair in Respondent's "C" sample to conduct D- and L-isomerization analysis (T. 201). He acknowledged that he approved Respondent's suspension on March 3, 2023, before ordering an isomerization test on the "A" and "B" samples, based partly on Respondent's denial that he accidentally ingested selegiline (T. 204-205). When asked why he ordered the isomer tests on March 9, 2023, he responded:

So, I wanted to be thorough, number one. But I would anticipate if this came to a litigation, that issue might come up, and I would want to have that to show that it was a hundred percent D- because of the circumstances that were given to me on March 3, that there was no ingestion of selegiline and no other factors of the cutoff level, and no other alternative explanation; that was the reason I ordered the D and L . . .
(T. 205-206)

When Counsel for Respondent asked Dr. Ciuffo what he would have done if the isomerization test returned 100% L, he answered, "I probably would have had to ask more questions" (T. 206).

Respondent's Case

Kenneth Reine

Reine testified that he is a laboratory manager with Quest Diagnostics, Incorporated (T. 390). The parties stipulated that Reine was an expert in workplace drug testing (T. 390-391).

Quest tested the "C" sample provided by NYPD and confirmed the presence of methamphetamine through a gas chromatograph mass spectrometry; because of the paucity of hair samples left, they were unable to perform a mass spectrometry test to determine whether the D- or L-isomer was present (T. 395, 398-400, 409).

Reine testified further that Quest also tested a sample of chest hair provided by Respondent; the hair was collected on March 8, 2023, and received by the laboratory on March

11, 2023 (T. 400-401). The sample was accepted as a “general specimen to be tested for drugs of abuse, so only screening testing was performed on the sample” (T. 401). Quest subjected the sample to immunoassay for THC, then laser diode thermal desorption mass spectrometry for all other drugs of abuse (T. 401-402). No confirmation testing was performed because all initial test screenings yielded negative results (T. 403). The tests employed a cutoff level for amphetamine and methamphetamine of 500 picograms per milligram (T. 404). Reine testified that the cutoff level would be the equivalent of .5 nanograms per 10 milligrams (T. 404-405).

Reine was asked the following questions and gave the following answers:

- Q. And doctor, I don't know if you can answer this, but if on February 19, if pursuant to a random drug test, my client tested positive where another scientist testified that he may have been doing a thousand milligrams of methamphetamine a week, would you have expected within 30 days of a new test being taken on hair that it would be negative within a reasonable degree of scientific certainty?
- A. On a body hair specimen, which both of these were, taken from different locations on the body, you can get radically different results because there are no growth pattern [sic] in body hair similar to there is in head hair that is used to correlate.
- Q. Body hair goes back six to eight months.
- A. Body hair, the only thing you can say definitively with body hair is that, all the hair on your body is replaced annually, so within a year. One hair right next to another one, one may be growing and incorporating drug at that time, where the one right next to it may be in a dormant phase and not incorporating drug. Again, it's completely random; unlike head hair, body hair does not grow all together at the same rate.
- Q. So, head hair would go back 90 days: that's pretty constant?
- A. Yes, sir, if you take another head hair sample you would have a[n] expected consistent result.
(T. 407-408).

On cross-examination, Reine testified that on page 25 of the chest hair sample testing package, the 149 value represents either the methamphetamine or possibly noise because the test was only a screening test; if, however, the value did mean actual methamphetamine, it would

convert into .149 nanograms per milligrams (T. 412-413, 415). He testified further that the sample did not progress to confirmation screening because the requestor only asked for initial screening; this result was not invalidated by the absence of a D/L isomer profile test (T. 416-417, 418). Reine testified that for the laboratory to be confident that there was, indeed, methamphetamine present in the chest hair sample, the value would have had to exceed 500 and then proceeded onto confirmation (T. 419).

Dr. Liaqat Abbas

Dr. Abbas testified that he has a Faculty of Science degree from Pakistan and a Doctor of Medicine degree from Ross University (T. 430). He has worked in the field of workplace drug testing for over 25 years (*Id.*). Dr. Abbas has testified over 200 times, in 34 states, and as an expert in this field (T. 430-431). He is the manager of the United States Drug Testing Laboratory certification department and has worked there since 2001 (T. 431). Dr. Abbas is not a licensed forensic toxicologist; he contended that such a license is optional for his position. He is not licensed to practice medicine in the United States (T. 432).

Dr. Abbas testified regarding the analyses performed by USDTL on Respondent's Exhibits E ("the toenail package") and F ("the fingernail package") (T. 433-434). He testified that the toenail package was subjected to immunoassay testing for five drug panels and tested negative for all five (T. 435). The samples in the toenail package were collected on April 18, 2023 (T. 436). The cutoffs were 500 picograms per milligram for amphetamines and cocaine, 200 picograms per milligram for opiates, 300 picograms per milligram for PCP (phencyclidine), and one picogram per milligram for cannabinoids (T. 436-437). Dr. Abbas testified that the amphetamine cutoff of 500 picograms per milligram was converted into five nanograms per ten milligrams (T. 437). He also testified that the screening tests were qualitative and did not

provide information regarding ingestion or contamination when the result of the screening test was negative (T. 438).

Dr. Abbas testified that a reconfirmation test was performed on the toenail package at 40 picograms per milligram, a lower cutoff than the normal level of 100 picograms² (T. 438). The reconfirmation test revealed the presence of 68 picograms per milligram for methamphetamine and negative results for amphetamine, MDA, MDMA, and MDEA (T. 438-439). He testified further that if there is no metabolite, but the parent drug is present, that would be consistent with environmental exposure (T. 439).

Dr. Abbas testified further that samples in the fingernail package were collected on March 28, 2023, and subjected to immunoassay testing at the same cutoff levels as the toenail package (T. 440). He testified that the “lookback period” for toenails was 14 months and six months for fingernails (T. 440-441). Dr. Abbas testified that the testing on the fingernail sample was negative for amphetamine and methamphetamine (T. 441).

On cross-examination, Dr. Abbas clarified that his laboratory only tests nail clippings rather than nail shavings (T. 443). He later testified that the laboratory used clippings because they were more convenient for the clients, and in the laboratory’s experience, there was “not much difference for the result” (T. 449-450). While he conceded that methamphetamine is water-soluble, he disputed the assertion that fingernails and toenails are highly porous (T. 443-444, 445, 446).

He contended that scientific literature supported his claim that drugs can be detected six to fourteen months after usage, but could not cite a specific study (T. 444). Dr. Abbas testified that the toenail package was sent for liquid chromatography/mass spectrometry because the

² Dr. Abbas previously testified that the cutoff was 500 picograms per milligram (T. 436). The Tribunal will infer that Dr. Abbas misspoke.

client requested it; the fingernail package was not sent for this testing because the client did not request it (T. 450). He also testified that the toenail package was not sent for a D/L isomer profile because the client did not order it (*Id.*).

Dr. Abbas was asked the following questions and gave the following answers:

Q. Doctor, would knowing that the Respondent had tested positive for 100 percent D-methamphetamine, would that have been an important factor for you to know at the time you conducted the mass spectrometry test?

A. No, because we are testing with the sample we received, and it has no bearing on what the other results were of other things.

Q. Had it been made known to you, would you have recommended that that sample be sent out for D/L isomer profile testing?

A. If somebody wants to do it, yes. If he wants to make sure it's D or L, yes.
(T. 453).

Dr. Abbas conceded that his laboratory's immunoassay is not approved by the Food and Drug Administration (FDA); the laboratory is also not FDA-approved to conduct workplace drug testing concerning nails (T. 454). When he was asked whether he was familiar with an article authored by Virginia Hill, Neil Stowe, Ryan Paulsen, and Michael Schaffer, entitled "Nail Analysis for Drugs: A Role in Workplace Testing," he testified that he may have read it (T. 460).

Dr. Abbas was then asked the following questions and gave the following answers:

Q. [I]n this study, they found that with respect to water uptake by nails, weight gain, -- I'm quoting from the study, this is not in evidence, but I make reference to it, page 4 under result, weight gain by nails when placed in water was about 15 to 30 percent of the original weight of the nails. Does that fact, does that finding, surprise you given the fact that your testimony is that nails are not porous?

A. If you're saying they were soaked in water.

Q. Yes, sir.

A. And took -- I don't know how to answer that.
(T. 461-462).

On re-direct examination, Dr. Abbas defined “environmental exposure” as occurring through nails and hair; he opined that skin does not absorb the drug. He testified that if someone were to ingest a drug, the nail bed beneath the fingernail would be a place where drugs could get from underneath the nail to the nail, but in the case of environmental exposure, that transfer would be unlikely. He was asked a hypothetical question if someone were handling a drug for 45 consecutive days, whether it would be easier for the drug to be absorbed underneath the nail; he answered that if it were environmental exposure, it would not seep from the nail into the skin. (T. 465-466). On re-cross examination, Dr. Abbas was asked whether, during environmental exposure to a drug, if the drug were to get onto the surface of a nail, it would enter the bloodstream; Dr. Abbas testified that it would not enter the bloodstream, but would enter the nail (T. 467).

Dr. Mario San Bartolome

Dr. San Bartolome testified that he is board-certified in family medicine and addiction medicine and certified as a medical review officer. His practice is through outpatient community clinics, seeing 60-70 patients per week who are dealing with substance abuse disorders. Of that patient base, 90% involve opioid issues, 75% methamphetamine and other psychostimulants, and 60% alcohol and hallucinogens. He characterized these patients as a low-income, vulnerable population. Dr. San Bartolome has been a medical director at hospital-based detoxification units, residential treatment programs, and a partial hospitalization outpatient program. He testified that he provides training to public defender offices and medical professionals who work with persons detained in juvenile facilities and prisons. Dr. San Bartolome is a physician licensed by the State of California (T. 470-472). He has testified as an expert in drug addiction approximately 50 times (T. 476).

Dr. San Bartolome testified that in preparation for his testimony, he reviewed the “depositions³” of Dr. Paulsen and Dr. Ciuffo; laboratory results from Quest and Omega laboratories; three years of Respondent’s medical records; conducted interviews of Respondent, two co-workers, and his sister-in-law (T. 477-478, 481). He saw nothing in the materials he reviewed before his testimony consistent with methamphetamine abuse about 1000 milligrams per week (T. 491-492).

Dr. San Bartolome was asked what psychological and physiological effects he would expect to observe in a person who was using approximately 1000 milligrams⁴ of methamphetamine per week. He testified that at that amount, he would see some degree of tolerance formed; at the moment the drug is used, then soon afterward, he would expect to observe indicia of the use of most psychostimulants, such as tachycardia, elevation of blood pressure and a fast heart rate. There could also be an increase in body temperature and a decrease in appetite. Depending on how long the person had been using the drug, there could be the beginning signs of “twitchy” behavior or looking agitated. In prolonged use, one may observe psychosis, causing auditory or visual hallucinations and changes in brain structure. It is also possible that there might be memory loss, mood disturbances, or an increased agitated state. Binge-crash patterns are also a possible behavioral consequence (T. 478-480).

Dr. San Bartolome testified that there was nothing in the three years of Respondent’s medical records that he considered indicia of drug abuse. He detailed that Respondent had two chronic illnesses, Type-2 diabetes, and hypertension, with regular follow-up. His records

³ Neither Dr. Paulsen nor Dr. Ciuffo were deposed in this matter. The Tribunal will assume that Dr. San Bartolome misspoke and was referring to the testimony Dr. Paulsen provided on July 18, 2023, and Dr. Ciuffo provided on July 19, 2023.

⁴ I take judicial notice that 1000 milligrams are equivalent to one gram, which is equal to 0.035274 ounces.

showed that he had been screened for mental health disorders and had no history of mental health issues, alcohol abuse, or smoking (T. 481-482).

Dr. San Bartolome also testified that his interview of Respondent's supervisor did not reveal any information suggesting Respondent's alleged drug abuse of methamphetamine. He testified that a supervisor of an officer who works regular tours from 0700 hours to 1600 hours, in the company of other police officers who are trained to identify drug impairment, would have noticed a lack of discipline in reporting for work, a disheveled appearance, dilated pupils and a very forward demeanor. If Respondent were in a binge-crash cycle, a supervisor could observe fatigue, difficulty keeping one's eyes open, and evidence of sleep deprivation (T. 483-484).

According to Dr. San Bartolome, Respondent's supervisor told him that Respondent was always on time for work, ready to assume his duties and alert. Respondent never presented a problem for his supervisors or his colleagues. The supervisor told Dr. San Bartolome that he considered Respondent an exemplary police officer (T. 484-485).

Dr. San Bartolome was asked the following hypothetical question and gave the following answer:

Q. Hypothetically, doctor, if you were to be given a drug test in February 2023, and you failed that drug test, which meant that hypothetically, you couldn't use that drug any more, how easy would it be to just stop doing methamphetamine if the allegation is you have been doing a thousand grams a week?

A. So if you're doing a thousand milligrams a week, and that's, you know, thought to be for quite some time, it could be difficult if you have gained dependence. Generally, it would show up in the form of cravings, and you would have withdrawal during that time. So I mentioned before, in the case of methamphetamine withdrawal, it's not life threatening, but it does show up as people having prolonged fatigue and maybe sleeping for several days; it's that crash phase that one would see if one would stop. That would be very dependent on the frequency of use and the degree to which they amass what we call tolerance.

(T. 489-490).

Dr. San Bartolome testified that, concerning body weight, the effect of methamphetamine abuse could manifest itself in two ways: in the case of “casual use or very specific use without the involvement of addiction,” the drug can suppress appetite and act as a weight loss tool. On the other end of the spectrum, “in people that really use methamphetamine consistently, they tend to waste away” (T. 490-491).

Dr. San Bartolome testified that he was aware that Respondent had failed a hair test and that he had reviewed the litigation packages. He acknowledged that the cutoff used by Psychemedics was five nanograms per 10 milligrams and that Respondent’s sample tested at a level of 10.4, almost double the cutoff level. Dr. San Bartolome testified that there was nothing he observed, either psychologically or physiologically, which would corroborate that level of metabolite in Respondent’s sample:

If that’s a reflection of daily use, I would expect for him to have either on his medical record or among other dimensions of his life, evidence of those substance use disorder elements that I mentioned affecting the different dimensions of life that begin to fall apart, and you know, from a longtime perspective from people that have known him a long time, there was never any indication that either from methamphetamine or actually any other substance of any kind or any history of impairment was ever something anybody observed.
(T. 492-493).

On cross-examination, Dr. San Bartolome conceded that he was unable to determine, based on a single, one-hour interview, with Respondent whether he was a drug user or a drug addict. He further conceded that he could not gauge the veracity of any persons he interviewed about Respondent and could not discern whether they may have been withholding information. Finally, he acknowledged that he had never physically examined the Respondent (T. 496-498).

Dr. San Bartolome testified that the psychological and physiological indicia of methamphetamine drug abuse, as he testified to them, were also subject to heterogeneity, meaning that there could be variations in the magnitude of any observable indicator based on the

user's tolerance level. Another qualifier concerning methamphetamine is that it is illicit in the United States; that is, if one were to acquire the drug from a drug dealer rather than a physician, there is no quality control to assure a user that he is taking a certain number of milligrams of the drug (T. 501-502). Dr. San Bartolome concurred with Dr. Paulsen's opinion that the Psychomedics laboratory result, extrapolated to illicit drug use of approximately one thousand milligrams per week, was qualified by the purity of the drug and its frequency of use (T. 502). He conceded that despite his testimony that he did not see any indicia of methamphetamine abuse in Respondent's medical records, there are no medical diagnostic tests, such as CT scans, MRIs, or blood tests, which can be used to identify methamphetamine abuse (T. 502-503).

On re-direct examination, Dr. San Bartolome testified that no diagnostic drug test could diagnose addiction, whether the medium is blood, saliva, urine, or sweat. To arrive at such a diagnosis, the practitioner must employ criteria from the "DSM-5" (Diagnostic and Statistical Manual of Mental Disorders) to arrive at a diagnosis of methamphetamine use disorder, which need not be an addiction and may exist in a "gray zone" (T. 515).

On re-cross examination, Dr. San Bartolome acknowledged that before offering his expert testimony, he was made aware that Respondent had failed a workplace drug test, which revealed the presence of 100% D-methamphetamine (T. 517). He was asked how he reconciled that fact with his opinion that he did not observe any indicia of methamphetamine use disorder in his review of supporting documents and interviews; he was also asked whether he was open to the possibility that there may be an individual who did not fit the model of a person with a drug use disorder. Dr. San Bartolome answered:

So the reason we don't have drug testing in the clinical diagnostic criteria is because it has a dependency on technology, and that it is variable from the technology used ten years ago versus the technology now are variable, the tools used. Based off the deposition that I saw, you can see it can get quite

complicated, so I'm – I'm not giving an opinion onto – related to the drug testing aspects of that. My question was to evaluate essentially all the other aspects, whether or not there was [sic] signs, symptoms, and characteristics that are consistent with methamphetamine use in [Respondent] based off of all the different sources of information that I had and sought to seek out. (T. 517-518).

Dr. Michael Thomas Ricciardi

Dr. Ricciardi testified that he is a dentist who received his degree from the State University at Buffalo in 1999. He also testified that he has been Respondent's dentist for approximately seven years and sees him bi-annually (T. 521-522).

Dr. Ricciardi testified that he was familiar with the term "meth mouth" and understood it to refer to a person who has taken methamphetamines, developing dry mouth, clenching of the teeth, extensively decayed teeth requiring removal, blackness of the teeth and significant bleeding. He testified further that in his examinations of Respondent's mouth, he did not detect any signs of this condition. Dr. Ricciardi recollected that Respondent presented only a single cavity during the period he was treating him (T. 523-524). He testified that Respondent had not displayed any mood swings or weight fluctuations that he observed. Dr. Ricciardi described him as an amicable and pleasant patient, who sometimes gave him olive oil (T. 524). He testified further that he had treated two patients with "meth mouth" in his practice and that "they're usually very thin" (T. 525). He contrasted Respondent's bodily appearance as "not necessarily a toothpick" (*Id.*).

Susan Rizos

Susan Rizos testified that she is Respondent's spouse of thirty years (T. 532). She testified that she discovered, through online research, that the medication selegiline metabolizes into methamphetamine (T. 535-536). She provided this information to Respondent (T. 537).

Mrs. Rizos testified that she continued researching where Respondent could have additional tests

performed; she found an establishment that would analyze Respondent's underarm and chest hair. She later discovered that testing Respondent's fingernails and toenails was an option; she and Respondent traveled to a collection site in Queens to provide fingernail samples, and a collector came to their home to obtain toenail samples (T. 537-538).

Mrs. Rizos confirmed that they had provided selegiline to their dog for a condition initially identified in the spring of 2022, but which had not improved by October of that year despite trying several other medications (T. 538-540). According to Mrs. Rizos, she took the dog to the veterinarian on October 10, 2022, and he then prescribed selegiline (T. 540). She testified that she ordered it online from a veterinary pharmacy and received it on October 12, 2022 (T. 541).

Mrs. Rizos testified that the dog did not ingest the medication in its original pill form; the pill had to be cut and crushed to mix with his food (T. 541-543). She testified that beginning on October 12, 2022, Respondent prepared the medication for the dog's consumption before he went to work in the morning (T. 543). According to Mrs. Rizos, Respondent used a green cutting board they also used for cutting vegetables to prepare the dog's medication; she also testified that he did not use gloves when handling the medication (T. 542-543).

On October 21, 2022, Mrs. Rizos had orthopedic surgery, which prevented her from performing household tasks; from that time forward, Respondent performed all tasks around their home, including all dog feedings (T. 543-544). Mrs. Rizos testified that the dog died on December 8, 2022 (T. 544).

Respondent

Respondent testified that on February 19, 2023, he was notified that he had to report to Lefrak City for a drug test (T. 563-564). When he arrived, a sample of hair from his lower right

leg was collected (T. 564). He testified that when he was informed that the drug test came back positive for methamphetamine, he was shocked (T. 567). He testified that he knew nothing about methamphetamine because he was “not a drug guy” (*Id.*). Respondent testified that the only thing he knew about “meth” was that “people take it for weight loss, like speeding, something with speeding” (*Id.*).

Respondent testified that he spoke with his wife before submitting the leg hair samples to get a list of his medications for several chronic conditions, including high blood pressure and diabetes (T. 568). After he learned of the positive test results, he had another conversation with his wife, in which they discussed selegiline, the medication they had given their dog, and its ability to metabolize into methamphetamine (T. 568-569). Respondent testified that as soon as he learned this information, he called Dr. Ciuffo (T. 569). He testified further that he had two telephone conversations with Dr. Ciuffo: in the first, Dr. Ciuffo asked him if he had any explanation for why he tested positive, and Respondent said he had no idea (*Id.*). Once he spoke with his wife, and she informed him about the selegiline, he then called Dr. Ciuffo’s office and passed on the information to him (T. 569-570). He was questioned in an official Department interview before being suspended (T. 570).

Respondent testified that after testing positive, he took two independent tests of his chest and underarm hair; he claimed that many testing facilities he considered using did not take hair samples from the body (T. 570). He also arranged to analyze his fingernails and toenails (T. 570-571). He testified that the results of all the tests were negative (T. 571). Respondent testified that he takes two prescription medications for high blood pressure and two for diabetes; he also asserted that his weight has not fluctuated for the past 15-20 years (*Id.*). He described his overall mood when he goes to work as that of a happy person (T. 572).

Respondent testified that when his wife had surgery in 2022, he took care of her and all the household responsibilities. He also took care of feeding their dog. He denied ever using methamphetamine, marihuana, or cocaine. He claimed no opinion on drugs since he had never used them. He professed no knowledge of where he could buy drugs on Staten Island, assuming he wanted to do so. Respondent testified that he had never made an arrest for methamphetamine. When Respondent was asked whether he had any explanation for why he would have tested positive for 100% D-methamphetamine, he responded that the only connection he could make was with the dog's medication because "we didn't even know what they send [sic] us" (T. 572-574).

On cross-examination, Respondent was asked when he arranged for independent testing after he tested positive, why he elected to have analyses of his chest and armpit hair conducted, as opposed to just using hair from his left leg; he responded that the hair on his legs was very short, and his chest hair was about four times as long (T. 575). He conceded that although the tests for the fingernails and toenails initially came back with a negative result, further analysis of his toenails revealed the presence of methamphetamine, albeit below the laboratory cutoff (T. 576). When questioned about his assertion that he never took drugs, he asserted that even when he had surgery on his knee, he only took pain medication a day while hospitalized (T. 577).

On redirect examination, Respondent identified the cutting board he used to cut and crush his dog's medication (T. 577-578). On re-cross examination, he was asked whether he washed the knife he used after crushing the dog's medication. Respondent replied that the dog's morning feeding was so close to the time he had to go to work that he would almost be late. He asserted that he never cleaned the cutting board in the morning, but did so in the evening after dinner. He complained that they were never provided any warning on a label about the contents

of the dog's medication, but asserted that he used the same cutting board to prepare his dinner. Respondent acknowledged that he was a trained chef and that he was trained in proper kitchen hygiene. When asked whether he washed his hands after stirring the dog's food with his finger, he answered, "Most likely, yes" (T. 577-581).

Lieutenant Chad Manzi

Lieutenant Manzi testified that he was acquainted with Respondent, having worked with him in the 122 Precinct 16-17 years earlier when they were both patrol officers (T. 330). He testified that at that time, Respondent did not display any behaviors that would have led him to suspect that he was abusing drugs (*Id.*).

Lieutenant Manzi testified that on March 3, 2023, after Respondent tested positive for methamphetamine, his case was assigned to Group 33, Internal Affairs Bureau (IAB) for a "character assessment" (T. 331). He testified further that he was the team leader on this case and supervised the lead investigator (*Id.*). According to Lieutenant Manzi, this inquiry is performed by IAB whenever a Member of Service tests positive on a drug-screening test (*Id.*). As part of the inquiry, individuals who are familiar with Respondent were asked whether he ever behaved in a manner that a reasonable person would consider abnormal, whether he ever discussed or joked about the use of illegal drugs, and whether he ever appeared to be under the influence of any substance (T. 331-332). Lieutenant Manzi's team also conducted three surveillances of Respondent: on one occasion, he was observed walking his dogs (T. 332-333). He testified that Respondent's garbage was not screened, as that investigative tool is used when investigating an anonymous tip that a Member of Service is using or selling drugs, not for a positive drug screening result (T. 333).

Lieutenant Manzi testified that the report of his group's investigation was forwarded to the IAB Intelligence Division for further review; as part of that secondary review, his group's findings would be examined by Field Associates (T. 334). The Intelligence Division did not forward a response to Group 33's request until approximately two weeks before this hearing; Lieutenant Manzi speculated that the investigator in the Intelligence Division was new and overlooked the issuance of the report (T. 335-336). He testified that the Intelligence Division report asserted that the "Agent does not know the subject officer well enough to provide a character assessment, unknown phone or social media" (T. 336-337). Lieutenant Manzi testified that his group did not uncover any evidence that corroborated the result of the drug-screening test (T. 339).

Sergeant Archie DePietro

Sergeant DePietro testified that he is a 25-year Member of Service (T. 344). He detailed that for two years, Respondent was his operator in the 122 Precinct (T. 345-346). During that time, he worked and socialized with Respondent (T. 346-347). According to Sergeant DePietro, Respondent was a generous person who often brought food into the precinct for other police officers and sometimes brought flowers into the precinct that he had grown in his yard (*Id.*). He testified that within the precinct, Respondent enjoyed a reputation for honesty (T. 347-348). Sergeant DePietro testified that Respondent was always upbeat and never displayed any behavior consistent, in his view, with drug use (T. 348-349).

Police Officer Daniel Patton

Officer Patton testified that he has known Respondent for over 19 years and has served with him in the 122 Precinct for that entire period (T. 365). He had daily interaction with him during that time, as they were assigned to the same tour of duty. Officer Patton described

Respondent's demeanor at work as "always in a great mood . . . John's loud . . . laughing . . ."

Patton testified that he and Respondent collaborated in barbeques and fundraisers at the Precinct (T. 365, 370, 373).

Officer Patton asserted that Respondent had a reputation for truthfulness and veracity (T. 367). He also testified that he knew Respondent had a dog who became ill near the end of 2022 or the beginning of 2023 (T. 367). Respondent discussed the dog's illness with him daily, including Respondent being required to administer medicine and take him for a walk before reporting for duty in the morning (*Id.*). According to Officer Patton, Respondent described chopping up the dog's medication and mixing it with its food (T. 368, 374).

Officer Patton testified that three to four times a week, immediately after roll call, Respondent's habit was to go to a cemetery near the precinct, which had a large pond, and feed the ducks (T. 369, 372, 374-376). He denied that Respondent ever displayed mood swings or fatigue, and asserted, "John was full of energy when he walked into that building" (T. 372). He further denied observing any fluctuations in Respondent's weight or changes in his behavior, which would be consistent with someone abusing methamphetamine (T. 371).

Police Officer Mel Perashi

Perashi testified that he was assigned to the 122 Precinct in 2012 and has known Respondent since then (T. 378). He and Respondent worked in the same squad for approximately five years and have a social relationship, which included visiting each other's homes and socializing accompanied by their wives (T. 378-380). He denied witnessing Respondent display mood swings, irritability, or hyperactivity (T. 380). Perashi also denied observing Respondent "crashing" at work due to fatigue (T. 380-381). He testified that Respondent had a good reputation for truth and veracity; he described him as a cheerful, helpful co-worker with a sense of humor (T. 381). He also testified that Respondent brought food to

work for his squad and participated in every barbeque at the command (T. 382). Perashi denied observing any fluctuations in Respondent's weight (*Id.*).

Perashi testified that he had made over 100 narcotics arrests while assigned to the 28 Precinct and Patrol Borough Manhattan's Anti-Crime Squad (T. 382-383). He asserted that he interacted with persons who had abused heroin, cocaine, crack, and PCP; according to Perashi, Respondent did not exhibit any of the traits he came to associate with those individuals, such as mood swings, dilated eyes, and evasiveness (T. 383). He further denied that Respondent displayed any psychological or physiological indicia of methamphetamine abuse (T. 384).

On cross-examination, Perashi testified that he was unfamiliar with the differences between the physiological and psychological effects of cocaine and methamphetamine on abusers. He then testified that methamphetamine was a stimulant and that cocaine typically caused abusers to be hyperactive or talkative. He finally conceded that he had no experience with methamphetamine abusers (T. 384-385).

Polygraph Evidence

Respondent moved to admit evidence that he had submitted to polygraph testing and that such testing established his credibility regarding the subject matter of his trial testimony; the Department Advocate opposed the admission of the evidence. The Tribunal denied Respondent's application on the dual grounds that the purported reliability of such examinations has been likened to pseudoscience and that such evidence tends to usurp the credibility function of the finder of fact⁵.

⁵ At the request of Counsel for Respondent, I permitted the results of the examination to be appended to this record as a court exhibit in the event a reviewing court in an Article 78 special proceeding deemed it an appropriate matter for consideration.

Credibility

Expert Witnesses

I credit the testimonies of Deputy Chief Surgeon Joseph Ciuffo, Dr. Ryan Paulsen, Kenneth Reine, Dr. Liaqat Abbas, Dr. Mario San Bartolome, and Dr. Michael Ricciardi as credible. The Tribunal permitted each witness to offer expert opinion testimony by stipulation of the parties. While the record does not explicitly indicate whether they were each compensated for their appearances, such compensation does not render their testimony unreliable *ab initio*. While Dr. Ciuffo testified as a fact witness on the Department's case-in-chief, Respondent offered him as an expert in general medicine. I note that Dr. Ricciardi testified that he is Respondent's dentist of long-standing, which suggests some level of bias in Respondent's favor.

The probative value of each witness's testimony will be discussed below.

Lay Witnesses

I credit the testimonies of Police Officer Kerry Grennan and Lieutenant Chad Manzi. Each testified based upon their performance of official duties connected with this case and was a disinterested witness.

I further credit the testimonies of Sergeant Archie DePietro, Police Officer Daniel Patton, and Police Officer Mel Perashi as truthful. They each testified to personal and professional relationships with Respondent. While they were offered as percipient witnesses (*i.e.*, they did not observe any behavior on Respondent's part which, in their view, was consistent with methamphetamine abuse), their testimonies had minimal probative value with respect to the factual issues before this Tribunal, but will be considered concerning possible mitigation of the penalty.

Susan Rizos, as Respondent's wife, is in a unique category. While there is a presumptive bias because of her long-standing relationship with Respondent, she is also a member of the New

York Bar, with an ethical duty of candor before any tribunal. I do not suggest that her testimony in this case was anything other than candid and forthcoming.

Respondent is an interested party in this proceeding. His testimony is at odds with the credible, relevant evidence in the record. His proffer of an alternative method of absorption of methamphetamine into his bloodstream was self-serving, in addition to lacking a factual and scientific basis for this Tribunal to credit. Based upon the totality of the record, I decline to do so.

Specifications 1: Wrongful Ingestion of Amphetamines

I find the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully ingested amphetamines between June 19, 2022 and February 19, 2023.

The Department Advocate established that Respondent's leg hair, collected on February 19, 2023, tested positive for D-methamphetamine. I credit the testimony of Police Officer Grennan, who collected Respondent's hair samples, packaged them, and sent them to the Psychomedics Laboratory for forensic testing. Psychomedics tested Respondent's "A" and "B" samples, and both tested positive for D-methamphetamine. I credit Dr. Ryan Paulsen's testimony as to the method by which Psychomedics determined that Respondent's leg hair contained evidence of prior usage of methamphetamine. I find Psychomedics' testing regimen and laboratory procedures are reliable and generally accepted in the scientific community.

Respondent did not disclose any medication, either on his drug-screening questionnaire or during the interview conducted by Dr. Ciuffo after his "laboratory positive" was reported, which could reasonably explain how his leg hair tested positive for methamphetamine through legitimate means.

Respondent offered evidence of an alternative method of methamphetamine entering his bloodstream, where it was detected by forensic analysis of his leg hair: his handling of selegiline, which a veterinarian had prescribed to treat his dog. I find that selegiline, while it is capable of being metabolized in the human body and producing a methamphetamine metabolite, has an isomer of methamphetamine, L-methamphetamine, which is distinct from D-methamphetamine, which is the metabolite of methamphetamine that is either medically prescribed or made by an illicit drug laboratory and which was found in Respondent's body. I further credit Dr. Paulsen's testimony that the "A" and "B" samples tested by Psychemedics were 100% positive for D-methamphetamine.

Even if Respondent had accidentally ingested the selegiline, which he denied during his interview with Dr. Ciuffo, his hair samples would have tested positive for L-methamphetamine, which they did not. In sum, contact with selegiline does not account for the D-methamphetamine found in Respondent's system.

In support of his theory that his handling of selegiline caused his positive test results, Respondent offered expert testimony from Kenneth Reine and Dr. Liaquat Abbas. Reine testified regarding toxicological analyses performed on Respondent's "C" sample, his chest hair and his underarm hair. Dr. Abbas testified regarding analyses of Respondent's fingernails and toenails. Both witnesses testified that, in their opinion, the analyses of the additional samples provided by Respondent yielded negative results.

I find that Quest Laboratory's analysis of Respondent's "C" sample bolsters, rather than undermines, the results of the "A" and "B" samples analyzed by Psychemedics, as it too tested positive for methamphetamine. Quest's inability to conduct an isomer profile is irrelevant since Respondent's alternative means of ingestion, if it were to be credited, could not have yielded any

isomer other than an L-methamphetamine, which is scientifically implausible, if not impossible, since his “A” and “B” samples, taken from the same source, tested 100% positive for D-methamphetamine.

Respondent has argued that the Medical Division’s failure to collect sufficient leg hair to permit Quest Laboratories to conduct an isomer profile on his “C” sample denied him due process. I find that Respondent’s proffer does not establish that he suffered any deprivation. His defense, that his test results reflected innocent ingestion of selegiline, rather than wrongful ingestion of methamphetamine, depends on being able to establish that the metabolite of that veterinary drug produces results identical to the results of his positive drug tests. Based on the totality of the evidence in the record, Respondent cannot point to any credible evidence to support that proposition. Dr. Paulsen and Dr. Ciuffo credibly testified that selegiline metabolizes into L-methamphetamine; not one of the experts Respondent called to the witness stand took a contrary position. Moreover, Respondent’s body hair, fingernail, and toenail samples were sent to laboratories he chose to conduct independent analyses; he did not ask any of these laboratories to conduct an isomer profile. Based upon the foregoing, Respondent has failed to establish that he was prejudiced.

In the view of the Tribunal, the analyses of Respondent’s chest hair, underarm hair, fingernails, and toenails, collectively and individually, lack probative value.

Chest and Underarm Hair Analysis

Reine testified that hair specimens taken from different parts of the body could show “radically different results” because there are no growth patterns in body hair like that of head hair. He testified further that one hair follicle may grow and incorporate a drug, but the hair

follicle next to it may be dormant and not incorporate a drug; he even described this process as “completely random.”

This leads me to the finding that toxicological analyses of similar hair from similar body parts are necessary for a reliable correlation that would be helpful to the finder of fact.

Fingernail and Toenail Analysis

Dr. Abbas testified that although his laboratory’s analyses of Respondent’s fingernail and toenail clippings yielded results they reported as negative, Respondent’s toenail clippings revealed the presence of methamphetamine metabolite in the concentration of 68 picograms per milligram. However, that value was below the normal cutoff level of 500 picograms per milligram. Similarly to the tests he ordered on his body hair, Respondent did not request that D- and L-isomerization analyses be performed on his fingernail and toenail samples. I note that Dr. Abbas’ laboratory is not approved by the Food and Drug Administration to conduct workplace testing using human nails.

In addition to the above-described results, Dr. Abbas took issue characterizing human nails as porous. He was then confronted with a scientific article, which reported that nails soaked in water absorbed 15-30% of their original weight; he conceded that he might have read the article but could not answer a follow-up question of how he reconciled the findings of that report with his assertion that nails were not porous.

Dr. Abbas also testified that his laboratory’s decision to collect nail clippings instead of nail scrapings was based on the client’s convenience rather than any scientific benefit. While this Tribunal possesses no specialized knowledge in this area, it seems counterintuitive for a laboratory to prefer samples taken from a place detached from a blood source when allowed to

obtain samples from a portion of the nail that is still attached to the bloodstream, the temporary repository of the drug metabolite.

Based on the analysis above, the methodology utilized by Dr. Abbas' laboratory is questionable and lacks probative value.

Behavioral Testimony

While Respondent elicited testimony from Sergeant Archie DePietro, Police Officer Daniel Patton, Police Officer Mel Perashi, Dr. San Bartolome, and Dr. Ricciardi that, in their experience with Respondent, he did not display any behaviors which would have reasonably led them to suspect that he was abusing methamphetamine, such testimony is speculative, subjective, and lacking significant probative value. I note that Dr. Ricciardi's testimony that Respondent did not have "meth mouth," even as attested by a dental professional, was so general that it is not dispositive here.

Respondent's argument, reduced to its essential element, is that the positive laboratory results offered by the Department Advocate should be disregarded because Respondent did not act like someone abusing methamphetamine. This theory invites the Tribunal to place greater probative value upon the observation, or lack of observation, of traits believed to be associated with drug abusers over scientific evidence that analyzes the bloodstream of a suspected drug abuser for the presence of the suspected drug.

I find that using a scientific test based upon provable scientific principles is preferable to the inherently subjective observations of human beings regarding the behavior of another human being. Dr. San Bartolome said it best when he referred to heterogeneity as a caveat on such observations; in other words, there can be variations in the magnitude of any observable behavior

based on the user's tolerance level. The scientific test detects the presence or absence of the drug without regard to the behavioral traits of the suspected user.

Accordingly, I find that the tests performed by Psychomedics Laboratories on Respondent's leg hair were reliable and that they established that he ingested methamphetamine sometime from June 19, 2022, to February 19, 2023. I find no credible evidence that Respondent ingested the methamphetamine innocently through using a prescription medication. Finally, I find the evidence offered by Respondent suggesting that the positive test result came from his handling of selegiline unpersuasive.

I therefore find Respondent Guilty of Specification 1.

Specification 2: Wrongful Possession of Amphetamines

I find the Department Advocate has met his burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully possessed amphetamines between June 19, 2022, and February 19, 2023.

I incorporate all of the findings of fact made above in my analysis of the evidence relevant to Specification 1. Because I have found that Respondent ingested methamphetamine from June 19, 2022, to February 19, 2023, he would also have had to possess the methamphetamine *a priori* at some point during the same period.

Accordingly, I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined. *See* 38 RCNY § 15-07. Information from his personnel

record that was considered in making this penalty recommendation is contained in an attached memorandum.

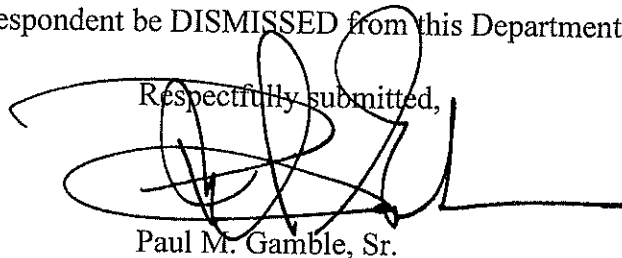
Respondent, who was appointed to the Department on July 1, 2004, has been found guilty of wrongfully ingesting and possessing amphetamines. The Department has recommended termination, and I concur.

The presumptive penalty for a random drug-screening test showing positive for a Schedule I or Schedule II drug is termination; there is no mitigated penalty. I take judicial notice that methamphetamine is a Schedule II controlled substance.

While I take note of the witnesses who testified to Respondent's positive reputation in the workplace, no amount of affability can outweigh an act of drug abuse by a police officer. Respondent may be well regarded for the manner in which he performs his patrol duties, but misconduct of this nature is disqualifying. Retaining Respondent on the rolls of this Department is incompatible with good order and discipline in the force.

Accordingly, I recommend that Respondent be DISMISSED from this Department.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPROVED

JAN 09 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER IOANNIS RIZOS
TAX REGISTRY NO. 934610
DISCIPLINARY CASE NO. 2023-28072

Respondent was appointed to the Department on July 1, 2004. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2020 and 2022 and "Meets Standards" for 2021. He has been awarded one medal for Meritorious Police Duty and one medal for Excellent Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, he was suspended without pay from March 3 to April 2, 2023; he remains suspended to date.

For your consideration.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials